

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications)	
Act of 1996)	
)	
Interconnection Between Local Exchange)	CC Docket No. <u>95-185</u>
Carriers and Commercial Mobile Radio)	
Service Providers)	

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**REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
ON PETITIONS FOR RECONSIDERATION**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	2
II. THE RECORD CONVINCINGLY SHOWS THAT THE COMMISSION HAS JURISDICTION OVER LEC-CMRS INTERCONNECTION UNDER SECTIONS 332(C) AND 201	4
III. MESSAGING PROVIDERS SHOULD BE COMPENSATED FOR TERMINATING LEC-ORIGINATED TRAFFIC AT THE SAME RATES AS OTHER CMRS PROVIDERS	6
IV. THE COMMISSION PROPERLY FOUND THAT THE LOCAL CALLING AREA FOR CMRS-LEC CALLING SHOULD BE BASED ON MAJOR TRADING AREAS	12
V. CMRS PROVIDERS SHOULD BE PERMITTED TO DETERMINE THE RATING POINTS FOR LANDLINE-TO-MOBILE CALLS	14
VI. THE COMMISSION PROPERLY FOUND THAT CMRS PROVIDERS ARE NOT LECS, BUT IMPROPERLY FOUND THAT MESSAGING PROVIDERS DO NOT OFFER "TELEPHONE EXCHANGE SERVICE"	15
A. The 1996 Act Excludes CMRS Providers From The Definition Of "Local Exchange Carrier"	15
B. Because Messaging Is Comparable To Landline Service In A Number Of Important Respects, Messaging Providers Do Offer "Telephone Exchange Service"	16
VII. CONCLUSION	19

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**REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION**

The Personal Communications Industry Association ("PCIA") respectfully submits its reply to the oppositions and comments to the petitions for reconsideration of the Commission's *First Report and Order* in the above-captioned proceeding.¹ Many of the commenters in this proceeding support PCIA's contentions that Section 332 of the Communication's Act of 1934 ("1934 Act") affords the Commission independent jurisdiction over local exchange carrier-commercial mobile radio service provider ("LEC-CMRS") interconnection and that the Commission should ensure that both broadband and narrowband CMRS providers are fairly compensated for terminating LEC-originated traffic.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, 61 Fed. Reg. 45,476 (Aug. 29, 1996) ("*First Report and Order*").

I. INTRODUCTION AND SUMMARY

PCIA has actively participated in this proceeding since it began in January 1996 with the issuance of a Notice of Proposed Rulemaking in Common Carrier Docket No. 95-185,² which dealt exclusively with interconnection between LECs and CMRS providers. Throughout this proceeding, PCIA has consistently argued that terminating compensation for LEC-CMRS interconnection -- that is, compensating each carrier for traffic terminated on its network -- is equitable, economically efficient, and pro-competitive. Further, PCIA has maintained that the Commission has jurisdiction over all aspects of LEC-CMRS interconnection under Sections 332 and 201 of 1934 Act, and that this jurisdictional mandate was unaffected by the 1996 Act.

In issuing the *First Report and Order*, the Commission opted to assert jurisdiction "under sections 251 and 252," while "acknowledging that section 332 in tandem with section 201 is an [alternative] basis for jurisdiction over LEC-CMRS interconnection."³ The Commission's Section 251 and 252 jurisdiction over the pricing of intrastate services has been called into question by the Eighth Circuit's stay of the *First Report and Order*.⁴ Although the Eighth Circuit has lifted certain portions

² *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd 5020 (1996).

³ *First Report and Order*, ¶ 1023.

⁴ *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Oct. 15, 1996).

of the stay relating to CMRS interconnection,⁵ it is still not clear whether the court will uphold the Commission's Section 251 and 252 jurisdiction over mobile services. Therefore, in resolving the instant petitions for reconsideration, it is crucial that the Commission clearly state that it has jurisdiction over all aspects of LEC-CMRS interconnection under Sections 332 and 201.

Consistent with PCIA's recommendations, a number of conclusions can be drawn from the record in this proceeding regarding interconnection between LECs and CMRS providers. First, the record convincingly shows that the Commission has jurisdiction over LEC-CMRS interconnection under Sections 332 and 201 of the 1934 Act. Second, many commenters agreed that messaging providers should be compensated for terminating LEC-originated traffic at the same rates as all other CMRS carriers, including cellular, broadband PCS and covered SMR providers for both equitable reasons and because paging networks are comparable to other CMRS networks. Third, substantial support was voiced for the Commission's conclusion that the local calling area for traffic between CMRS and LEC networks should be based on major trading areas ("MTAs"). Fourth, certain commenters asked the FCC to rule that CMRS providers may establish rating points for Type 2 interconnection different than the tandem for landline-to-mobile calls. Finally, a number of parties showed that the

⁵ *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Nov. 1, 1996). Specifically, the court removed Sections 51.701, 51.703, and 51.717 from the ambit of the stay. This permits CMRS carriers to stop paying LECs for traffic origination on their network, for all facilities dedicated solely to that traffic, and for interim reciprocal compensation.

Commission incorrectly concluded that narrowband CMRS providers do not provide "telephone exchange service."

II. THE RECORD CONVINCINGLY SHOWS THAT THE COMMISSION HAS JURISDICTION OVER LEC-CMRS INTERCONNECTION UNDER SECTIONS 332(C) AND 201

In its comments on the petitions for reconsideration, PCIA noted that the Commission has broad jurisdiction over LEC-CMRS interconnection under Sections 332 and 201 of the 1934 Act.⁶ Such jurisdictional authority is expressed in the plain language of Section 332(c), which preempts state regulation of the rates charged for LEC-CMRS interconnection,⁷ and specifically provides for FCC supervision over such interconnection.⁸ The legislative history of these provisions also makes clear that Congress intended to encourage vigorous competition in the CMRS market through the establishment of a federal regulatory structure.⁹ Finally, PCIA stated that the Commission should continue its ten-year-old policy of seeking to enforce the right of

⁶ PCIA also stressed that the Commission has jurisdiction over LEC-CMRS interconnection under the inseparability doctrine as set forth in *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 370 (1986) ("*Louisiana PSC*").

⁷ See 47 U.S.C. § 332(c)(3)(A) ("no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile radio service . . .").

⁸ See 47 U.S.C. § 332(c)(1)(B) ("Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service providers pursuant to section 201 of the Act").

⁹ H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993) ("the intent of this provision . . . is to establish a *Federal* regulatory framework governing the offering of all commercial mobile service").

CMRS providers -- as co-carriers -- to enter into fair interconnection agreements with LECs.¹⁰

A number of other commenters agreed with PCIA that the Commission has exclusive authority over interconnection between LECs and both broadband and narrowband CMRS providers under Section 332 of the 1934 Act. For example, Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc. ("Comcast/Vanguard") spoke for broadband CMRS carriers when they argued that "Section 332 grants the FCC exclusive jurisdiction to regulate CMRS providers and over common carrier interconnection with CMRS providers."¹¹ AirTouch Communications, Inc. ("AirTouch") and Paging Network, Inc. ("PageNet") further pointed out that by enacting Section 332(c) and its conforming amendment to Section 2(b),¹² Congress removed CMRS rates from state jurisdiction, and granted the FCC plenary jurisdiction over CMRS regulation.¹³

PageNet also commented that Commission jurisdiction over LEC-messaging carrier interconnection is particularly clear because messaging carriers *only* terminate

¹⁰ *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1498-1501 (1994).

¹¹ Comcast/Vanguard Comments at 6 (footnotes omitted). *See also* Sprint Spectrum, L.P. Comments at 2 (stating that Congress has noted that CMRS carriers operate without regard to state lines).

¹² "Except as provided in . . . section 332 . . . nothing in this Act shall be construed to apply or to give the Commission jurisdiction . . . [over] intrastate communication service." 47 U.S.C. § 152(b) (emphasis added).

¹³ AirTouch Comments at 18-20; PageNet Comments at 16.

LEC-originated calls. Therefore, the only interconnection rate -- that charged *by* messaging providers *to* LECs -- is clearly governed by Section 332(c)(3).¹⁴ Finally, PageNet supported PCIA's suggestion that pursuant to its Section 332 jurisdiction, the Commission should "uncouple" LEC-CMRS interconnection into a separate proceeding from LEC-competitive LEC interconnection.¹⁵

The Commission should therefore assert its plenary jurisdiction over LEC-CMRS interconnection, state that it applies to both *intra-* and *interstate* calls, and clarify that the rules relating to such interconnection are being promulgated under Sections 332 and 201. By so doing, the Commission will allow interconnection negotiations between LECs and CMRS providers to proceed with new vigor. The completion of these negotiations will advance the public interest by allowing the American public access to a greater variety of reasonably priced interconnected wireless services.

III. MESSAGING PROVIDERS SHOULD BE COMPENSATED FOR TERMINATING LEC-ORIGINATED TRAFFIC AT THE SAME RATES AS OTHER CMRS PROVIDERS

In its comments on the petitions for reconsideration, PCIA made two points regarding compensation of narrowband CMRS providers. First, the Commission was correct in its determination that messaging providers are entitled to compensation for terminating LEC-originated traffic. Second, the Commission was incorrect in its

¹⁴ PageNet Comments at 18.

¹⁵ *Id.* at 15.

determination that messaging providers -- unlike cellular, broadband PCS, and covered SMR providers -- are not entitled to use LEC costs as surrogates for termination rates. While a number of CMRS providers joined PCIA in these positions, certain LECs argued that messaging providers are not entitled to terminating compensation, and even if they are, LEC costs are inappropriate surrogates for such costs.

Arch Communications Group, Inc. ("Arch"), among others, squarely refuted the argument made by Kalida Telephone Company, Inc. ("Kalida")¹⁶ and the Local Exchange Carrier Coalition ("LECC")¹⁷ that messaging providers are not entitled to terminating compensation because they assumed that the messaging end user is the cost causer. Arch first submitted that Kalida and LECC "have it backwards," because the "cost causer" is the LEC customer who "seeks to call the paging end user."¹⁸ Arch added that because *all* calls originate on the LEC network, messaging providers *are* entitled to compensation for terminating such calls.¹⁹ Therefore, it would be both inequitable and contrary to Section 251(b)(5) to deny messaging providers compensation. Similarly, PageNet demonstrated that the one-way nature of narrowband traffic does not provide a basis for withholding terminating compensation from messaging providers, because they are indisputedly telecommunications carriers that

¹⁶ Kalida Petition For Reconsideration at 4-5.

¹⁷ LECC Petition For Reconsideration at 17-18.

¹⁸ Arch Comments at 2-3.

¹⁹ *Id.*

incur termination costs.²⁰ AT&T concluded that "in no way can the compensation that the Act requires be paid to paging providers be deemed a 'subsidy,'" given that paging providers incur legitimate costs in terminating LEC traffic.²¹

Not surprisingly, certain LECs argue that messaging providers are not entitled to terminating compensation. There are three basic strands to this argument, none of which withstand careful analysis. First, some LECs argue that "the unilateral nature of the [messaging] transmissions precludes a finding that compensation is or can be reciprocal in nature."²² Second, because "paging service exists for the convenience and need of paging customers," LECs and their customers do not benefit from calls to pagers and, thus, messaging carriers should not be paid any terminating compensation.²³ Finally, because "paging terminals do not perform true end office

²⁰ PageNet Comments at 3-4.

²¹ AT&T Comments at 42. GTE asserts that messaging providers "could give away pagers and simply reap all their compensation from the LEC for delivering their pages to their network." GTE Comments at 46. A brief look at the economics of the messaging industry completely disproves this assertion. Messaging providers offer monthly service -- including equipment rental -- for about \$10 per month. By way of example, the average user makes 50 pages per month, and the Commission's proposed terminating compensation rate is between \$0.002 and \$0.004 per call. If such providers were to simply give away pagers (at a cost of between \$60 and \$120 per unit) and rely solely on terminating compensation from LECs, they would earn 50 pages x \$0.004/page or *20 cents per month, minus the cost of giving away pagers*. No rational businessman would trade a \$10 revenue stream for a 20 cent revenue stream.

²² U S West Comments at 19. *See also* Southern New England Telephone Comments at 15; NYNEX Comments at 31.

²³ *Id.*

switching," messaging carriers need not be compensated for terminating LEC-originated calls.²⁴

The LECs' first argument grossly misstates the plain meaning of Section 252(d)(2). This section provides that local exchange carriers must enter into interconnection agreements with other carriers -- such as paging providers -- that "provide for the mutual and reciprocal *recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.*"²⁵ As pointed out by PageNet,²⁶ the statute clearly provides that carriers are to be compensated for terminating calls that originate on the networks of other carriers. There is nothing in the wording of this section to support the contention that carriers must *exchange traffic* in order to be compensated for terminating traffic.

The second argument is premised on a blatantly incorrect assumption of fact. As noted above, LEC customers derive substantial benefits from their ability to page the people they need to contact immediately. Further, returned pages stimulate substantial usage of the LEC network and associated revenues. Thus, because LECs and their customers both benefit from message provider termination of LEC-originated calls, message providers should receive compensation for such calls. Indeed, the 1996

²⁴ GTE Comments at 45.

²⁵ 47 U.S.C. § 252(d)(2)(A)(i) (emphasis added).

²⁶ PageNet Comments at 8-10. *See also* Arch Comments at 3.

Act provides compensation for all telecommunications carriers for the transport and termination of telecommunications. Not only would any other outcome be contrary to the Act, but it would also have the effect of giving LECs' free use of the networks of messaging carriers -- or a subsidy -- a concept that LECs have consistently and vehemently opposed when the network in question is their own.

The third argument -- that paging terminals do not perform true end office switching -- exhibits a similar ignorance of the facts. "Switching" is defined by Bell Laboratories as "the process of connecting paths between appropriate lines and trunks to form a communications path between two station sets."²⁷ Paging terminals fit squarely within this definition given that they perform the following functions: (1) they connect traffic delivered on landline trunks to either additional landline trunks or satellite trunks, which, in turn connect to paging lines; and (2) they perform tandem interconnection, including direct interconnection from IXC's. Paging switches also function as end offices in that they provide features such as called number validity screening, involved number announcements, congestion or busy tones, ringing and call progress tones, customer alerting functions, customer commanded call-forwarding, and answer supervision in a network compatible form.

Finally, a number of LECs stated that even if messaging providers were entitled to compensation for terminating LEC-originated traffic, they should not be entitled to

²⁷ Bell Laboratories, *Notes On The Network* 691 (1977).

the same termination rates as other carriers, including broadband CMRS providers.²⁸ In so doing, these LECs supported the Commission's conclusion that "paging is typically a significantly different service than wireline or wireless voice service and uses different types and amounts of equipment and facilities."²⁹

PCIA strongly disagrees with this analysis and instead believes that messaging carriers -- like other CMRS providers -- should be permitted to charge termination rates based on LEC costs. As pointed out by various messaging providers in their petitions for reconsideration, messaging networks are just as complex as the networks deployed by other CMRS providers.³⁰ This was succinctly summarized by PageNet's statement that, "[t]he network topology, and individual network elements, for the termination of calls over all wireless networks are substantially equivalent, whether the service is provided by a paging carrier, or by an SMR provider, IMTS provider, cellular carrier or PCS provider."³¹ Messaging providers thus should be able to charge termination rates based on LEC costs, the same as other CMRS providers do.

²⁸ See Ameritech Comments at 39-41; United States Telephone Association Comments at 37-38.

²⁹ *First Report and Order*, ¶ 1092.

³⁰ See PageNet Petition For Reconsideration at 3-12; AirTouch Petition For Reconsideration at 13-24.

³¹ PageNet Petition For Reconsideration at 6.

IV. THE COMMISSION PROPERLY FOUND THAT THE LOCAL CALLING AREA FOR CMRS-LEC CALLING SHOULD BE BASED ON MAJOR TRADING AREAS

In the *First Report and Order*, the Commission determined that traffic to or from a CMRS network that originates or terminates within the same Major Trading Area ("MTA") is subject to Section 251(b)(5)'s transport and termination compensation, rather than either state or interstate access charges.³² While many parties supported this conclusion,³³ the United States Telephone Association ("USTA") argued that the Commission's decision is "improperly discriminatory, and should be changed to be consistent with incumbent LECs' service areas."³⁴ USTA's assertion flies in the face of the substantial justification for this determination, including: (1) the Commission's vast authority in this area; (2) the administrative difficulties associated with adopting smaller calling areas; and (3) the competitive inequities that would result from the use of smaller calling areas.

First, as noted by Comcast/Vanguard, the Commission enjoys exclusive authority to define the authorized service areas of wireless carriers.³⁵ Such power stems from Section 301, which grants the Commission licensing authority over the use of "the channels of radio transmission" in the United States. Consistent with this broad

³² *First Report and Order*, ¶ 1036.

³³ *See, e.g.*, Cellular Telecommunications Industry Association Comments at 7-10; Arch Comments at 4; Comcast/Vanguard Comments at 4.

³⁴ USTA Comments at 39.

³⁵ Comcast/Vanguard Comments at 6.

jurisdictional grant, the Commission is solely responsible for defining the local service area for calls to or from a CMRS network for the purposes of applying the reciprocal compensation obligations of the 1996 Act.

Second, an area the size of an MTA is well suited to serve as the local calling area for CMRS providers. Because CMRS customers travel over wide areas while making calls, using local exchange boundaries to determine whether a call is toll or non-toll would price commercial mobile services out of the reach of most customers. As pointed out by Sprint Spectrum,³⁶ the Commission has recognized this market reality and established wireless service areas that do not coincide with local exchange boundaries.³⁷ Using smaller geographic areas would disrupt the operation of CMRS providers by requiring the establishment of systems that track local and non-local calls.³⁸ Even if technically practical, the expense of such tracking systems would ultimately be passed on to consumers, thereby unnecessarily raising the price of wireless services.³⁹

³⁶ Sprint Spectrum Comments at 2-3; *See also* Arch Comments at 4.

³⁷ *See Amendment of the Commission's Rules To Establish New Personal Communications Services (Second Report and Order)*, 8 FCC Rcd 7700, 7733 (1993) (defining PCS service areas as MTA-based); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of An SMR System in the 800 MHz Frequency Band*, FCC 95-501 (released Dec. 15, 1995) (defining wide-area SMR service areas as based on the Department of Commerce's Economic Areas).

³⁸ *See* AT&T Comments at 41.

³⁹ *See* AirTouch Comments at 13.

Third, the record in this proceeding clearly supports the Commission's conclusion that using MTAs rather than each individual provider's service territory helps to avoid the creation of "artificial distinctions between CMRS providers."⁴⁰ Avoiding such artificial distinctions based on differences in service territory promotes both CMRS competition and regulatory parity among CMRS providers, consistent with Section 332(c).⁴¹ For the aforementioned reasons, the Commission should not reconsider its well-founded decision to base local calling areas for CMRS-LEC calling on MTAs.

V. CMRS PROVIDERS SHOULD BE PERMITTED TO DETERMINE THE RATING POINTS FOR LANDLINE-TO-MOBILE CALLS

Consistent with the requests made by Comcast/Vanguard⁴² and AirTouch,⁴³ the Commission should specify that CMRS providers have the right to determine "the rating points associated with points of origin or termination of local calls between CMRS and landline LEC networks for purposes of assessing end user local or toll charges."⁴⁴ As described above, the Commission is empowered under Section 332(c)

⁴⁰ *First Report and Order*, ¶ 1036. See CTIA Comments at 8-10; Comcast/Vanguard Comments at 4.

⁴¹ See 47 U.S.C. § 332(c)(1)(A).

⁴² Comcast/Vanguard Petition For Reconsideration at 11.

⁴³ Air Touch Comments at 15 n.39.

⁴⁴ Comcast/Vanguard Petition For Reconsideration at 11.

to define the size of CMRS calling areas. This authority is bolstered by the 1996 Act's goal of promoting the development of advanced telecommunications services.⁴⁵

Allowing CMRS providers to determine the rating points associated with calls to CMRS customers advances the public interest in a number of ways. First, it encourages CMRS providers to construct state of the art networks in which a single tandem switch serves a large geographic area. Second, it comports with consumer expectations by allowing landline customers to contact mobile customers in the same MTA without incurring toll charges. Finally, it reduces the need for administratively complex "reverse billing" options, under which CMRS providers agree to compensate LECs for any toll charges associated with LEC-originated calls to mobile customers.⁴⁶

VI. THE COMMISSION PROPERLY FOUND THAT CMRS PROVIDERS ARE NOT LECS, BUT IMPROPERLY FOUND THAT MESSAGING PROVIDERS DO NOT OFFER "TELEPHONE EXCHANGE SERVICE"

A. The 1996 Act Excludes CMRS Providers From The Definition Of "Local Exchange Carrier"

Absent a Commission determination to the contrary, the 1996 Act states that CMRS providers should *not* be classified as LECs.⁴⁷ In the *First Report and Order*, the FCC considered and specifically rejected such arguments to the contrary: "[w]e are

⁴⁵ H.R. Rep. No. 458 104th Cong., 2nd Sess. 1 (1996).

⁴⁶ Air Touch Comments at 15 n.39.

⁴⁷ See 47 U.S.C. § 153(26) ("The term 'local exchange carrier' . . . does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent the Commission finds that such service should be included in the definition of such term").

not persuaded by those arguing that CMRS providers should be treated as LECs."⁴⁸ The record in this proceeding does not reflect that there has been a change in circumstances warranting such an adjustment in the treatment of CMRS providers.⁴⁹ Thus, consistent with the intent of Congress, CMRS providers must continue to be subject to different regulatory treatment than LECs until "*future* circumstances warrant."⁵⁰

B. Because Messaging Is Comparable To Landline Service In A Number Of Important Respects, Messaging Providers Do Offer "Telephone Exchange Service"

PCIA respectfully requests that the Commission expand its definition of "telephone exchange service," as outlined in the *First Report and Order* to explicitly include messaging providers.⁵¹ While NYNEX and USTA⁵² argue that the Commission has conclusively determined that "[p]aging is not 'telephone exchange service,'" that declaration was made only in a footnote in the portion of the Second

⁴⁸ *First Report and Order*, ¶ 1004.

⁴⁹ See Cox Communications, Inc. Comments at 7-8; Comcast/Vanguard Comments at 7-8.

⁵⁰ H.R. Rep. No. 104-458, 104th Cong., 2d Sess 115 (1996) (emphasis added).

⁵¹ *First Report and Order*, ¶ 1013. Currently, cellular, PCS, and covered SMR providers are included within the definition of telephone exchange service.

⁵² See NYNEX Comments at 27-30; USTA Comments at 35-37.

Report and Order in this docket addressing discriminatory code activation fees,⁵³ and does not comport with the broad definition of "telephone exchange service" set forth in the 1996 Act.

Specifically, the 1996 Act defines "telephone exchange service" as "(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area . . . and which is covered by the exchange service charge, or (B) *comparable* service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a *telecommunications service*."⁵⁴ The Act also defines the term "telecommunications" to mean "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."⁵⁵

The Commission has recognized that "[a]ll CMRS providers offer telecommunications," including messaging providers.⁵⁶ Thus, paging services fall within the second prong of the statutory definition of telephone exchange service so

⁵³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Second Report and Order, CC Docket No. 96-98, FCC 96-333 (rel. Aug. 8, 1996), ¶ 333 n.700 ("*Second Report and Order*").

⁵⁴ 47 U.S.C. § 153(47) (emphasis added). This is a broader definition of "telephone exchange service" than had previously existed; Congress changed the definition in the 1996 Act to include services "comparable" to telephone exchange.

⁵⁵ 47 U.S.C. § 153(43).

⁵⁶ *First Report and Order*, ¶ 1008.

long as they are "comparable" to landline service. Messaging services are in fact comparable to landline service in a number of important respects.

The Commission found the services offered by cellular, broadband PCS, and covered SMR providers to be "comparable" to landline service because those carriers "provide local, *two-way* switched *voice* service as a *principal part of their business*."⁵⁷ However, there is no justification in the 1996 Act for making the definition of "comparable" hinge on whether the service is one-way or two-way, voice or non-voice, or a principal or ancillary part of the carrier's business.⁵⁸ To the contrary, the nature of telephone service as a one-way or two-way conduit, or requiring the service to be used primarily by "voice" ignores the way modern exchange service is used.

Indeed, consumers and businesses often use telephone exchange service in one direction in order to leave electronic or voice mail, send facsimiles, or send data through modems. All of these one-way activities -- when offered by landline local exchange carriers -- are considered to be telephone exchange service. Similarly, the voice/non-voice distinction is irrelevant: surely the FCC does not believe that Internet traffic should be exempt from transport and termination charges solely because it is a non-voice service. Finally, the "principal business" distinction makes little sense,

⁵⁷ *Id.*, ¶ 1013 (emphasis added).

⁵⁸ Indeed, as persuasively shown by AirTouch, the Commission has a long history defining messaging services as exchange services. No argument made refutes these well reasoned prior conclusions.

given that it is the nature of the service in question, not the relative portion of the carrier's business that the service represents, that should be important.

Thus, PCIA urges the Commission to move away from distinctions based on form and consider the substance of the targeted services. Although paging is a one-way non-voice service, it is nevertheless "comparable" to certain forms of landline service such as voice mail, facsimile service, and Internet service. Therefore, if these other services are to be classified as "telephone exchange service," then so too should messaging service.

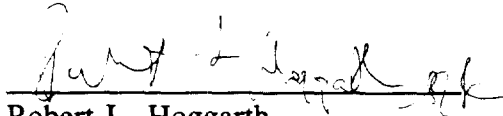
VII. CONCLUSION

The record in this proceeding establishes that the Commission has jurisdiction over LEC-CMRS interconnection under Sections 332 and 201 of the 1934 Act. Accordingly, the Commission should ensure that LECs equitably compensate CMRS providers when such providers terminate LEC-originated calls. The FCC should also affirm its decisions to base local calling areas for LEC-CMRS calls on MTAs, and not

to classify CMRS providers as LECs. Finally, the Commission should reconsider its determination that messaging providers do not offer "telephone exchange service."

Respectfully submitted,

**PERSONAL COMMUNICATIONS
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A handwritten signature in dark ink, appearing to read "Robert L. Hoggarth", is written over a horizontal line.

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November 14, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 1996, I caused copies of the foregoing "Reply Comments of the Personal Communications Industry Association on Petitions for Reconsideration" to be mailed via first-class postage prepaid mail to parties on the following list.



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